

**CHAPTER FIVE**  
**THE GRANT OF CLEMENCY TO**  
**DRUG MONEY LAUNDERER HARVEY WEINIG**

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## FINDINGS OF THE COMMITTEE

**Weinig was properly imprisoned for conspiring to launder millions of dollars in drug money and concealing and furthering an extortion-by-kidnapping scheme.**

- *Weinig, a former Manhattan attorney, conspired to launder about \$19 million dollars in drug proceeds through a Swiss bank for the Cali cartel. Members of the money laundering organization, of which Weinig was a part, boasted that they successfully laundered more than \$70 million for the cartel. In addition to conducting banking transactions for the organization, Weinig consulted with co-conspirators in furtherance of the organization's activities and stored the drug proceeds in his New York City apartment.*
- *Weinig and other co-conspirators at his law firm stole from the Cali cartel about \$2.5 million they were supposed to have laundered. This theft exposed Weinig's family to a risk of being harmed by those drug dealers. In the course of investigating the organization's money laundering activities, authorities intervened when they learned that the drug dealers sent a hit man to kill one of Weinig's co-conspirators.*
- *Weinig learned that one of his co-conspirators kidnapped an individual as part of a scheme to extort money from the victim's family. Rather than report the kidnapping, Weinig made his office available as a meeting place where the ransom could be delivered and directed his associates at the firm to execute transfer agreements.*

**Weinig's lawyer, a prominent Washington attorney with close connections to the Clinton Administration, lobbied the White House in support of Weinig's clemency petition.**

- *Weinig's wife, Alice Morey, retained Reid Weingarten, who was close to the Clinton White House, to lobby for the commutation. In April 2000, Weingarten filed a clemency petition on Weinig's behalf with the Justice Department and the White House. Knowing that the Justice Department would advise the President to reject the Weinig commutation petition, Weingarten lobbied the White House directly, approaching White House Counsel Beth Nolan, Deputy White House Counsel Bruce Lindsey, and Chief of Staff John Podesta.*
- *Weingarten chose not to familiarize himself with the facts of Weinig's underlying conviction. Accordingly, he was unable to convey to those he lobbied a full, accurate, factual basis of the merits of Weinig's petition.*

**Two former Clinton Administration officials, David Dreyer and Harold Ickes, lobbied the White House on Weinig's behalf.**

- *Alice Morey enlisted the assistance of her cousin, former White House Deputy Communications Director David Dreyer. Dreyer repeatedly raised the Weinig commutation with John Podesta. Ultimately, Podesta recommended that the President grant the Weinig commutation. Dreyer has invoked his Fifth Amendment rights rather than cooperate with the Committee's investigation.*

- *Morey also obtained support for Weinig's commutation from former Deputy Chief of Staff Harold Ickes, whose children attended the same school as did her sons. Ickes discussed the Weinig case with President Clinton twice and recommended the commutation of Weinig's sentence.*

**The Justice Department repeatedly and adamantly recommended against the commutation of Weinig's sentence.**

- *On several occasions, U.S. Attorney Mary Jo White, whose office convicted Weinig, objected to any reduction of Weinig's sentence. Ultimately, in a report to President Clinton, the Pardon Attorney and Deputy Attorney General Eric Holder voiced their strong opposition to a commutation of Weinig's sentence.*
- *Pardon Attorney Roger Adams submitted a report to the President advising against the Weinig commutation. Adams pointed out that Weinig "was a well-respected lawyer who used his professional skills to assist in laundering millions of dollars that he knew constituted the proceeds of a huge narcotics trafficking enterprise. He was involved in this activity for an extended period of time, and he admits that he engaged in it purely out of greed." Adams also informed the President that Weinig "aided and abetted the extortion of money from an individual he knew had been kidnapped at the direction of a co-defendant in order to coerce the production of a ransom."*

**After an apparently cursory review, the White House set aside the Justice Department's negative recommendation and granted Weinig clemency.**

- *Support for Weinig's petition from John Podesta and Beth Nolan appears to have been critical. The Associate White House counsels responsible for clemency matters did not support the petition. However, setting aside the negative recommendations of not only the Justice Department but also staff at the White House Counsel's Office, Nolan and Lindsey, who were lobbied by Weingarten, recommended Weinig's clemency to President Clinton. John Podesta, who was lobbied by Weingarten and Dreyer, also recommended to the President that Weinig's sentence be commuted.*

**The White House was unjustified in commuting Weinig's sentence.**

- *None of the arguments made by Weinig entitle him to executive clemency. In his petition, Weinig stated three main reasons why his sentence should have been commuted: (1) his sentence was disproportionate and excessive; (2) his contributions to society justified his early release from prison; and (3) one of his children was suffering emotional difficulties as a result of his imprisonment and needed him to return home. The first reason is simply not true. Weinig's sentence was comparable to those received by other co-conspirators who were directly responsible for laundering large amounts of drug money and declined to cooperate with authorities. Weinig's sentence was also comparable to those received by co-defendants who participated in the extortion-by-kidnapping scheme, which Weinig concealed and facilitated. The other two reasons fail to distinguish Weinig from the vast number of*

other similarly situated felons, who were properly sentenced but whose families have suffered because of their imprisonment.

**President Clinton's commutation of Weinig's sentence has sent out the wrong message about the United States' commitment to fighting drug trafficking.**

- *President Clinton's decision conveyed an appearance of granting special consideration to wealthy, politically well-connected criminals and their relatives.* Pardon Attorney Roger Adams foresaw the message sent by the Weinig commutation, warning President Clinton that "[t]o commute [Weinig's] prison term to the five years he proposes would denigrate the seriousness of his criminal misconduct, undermine the government's legitimate interest in encouraging prompt guilty pleas and truthful cooperation from criminal defendants, and could give the appearance of granting special consideration to economically advantaged, white-collar offenders."
- *The Weinig commutation undermines the nation's efforts to fight the illegal drug trade.* Complaints are frequently made that U.S. drug laws punish low-level drug criminals too severely yet do not punish high-level drug distributors enough. When a large-scale drug money launderer like Harvey Weinig receives executive clemency after serving five years of an eleven-year sentence, it sends the message that the U.S. is not serious about prosecuting the high-level criminals who make the drug trade possible.
- *The Weinig commutation has eroded the United States' moral authority to press other countries to fight the drug trade within their own borders.* The Weinig commutation could harm the efforts of the U.S. government to extradite drug traffickers and money launderers from Latin America. Newspapers in Latin American countries have accused the U.S. of hypocrisy in the Weinig case. For example, in Colombia's leading daily, former Colombian attorney general Gustavo De Greiff, in an op-ed entitled "The Morality of the Strongest," labeled President Clinton's clemency decision "monstrous."

## **I. BACKGROUND**

Harvey Weinig was among the 36 prisoners whose sentences were commuted on President Clinton's last day in office. Weinig, a former Manhattan attorney, was centrally involved in conspiring to launder about \$19 million in drug proceeds through a Swiss bank for the Cali cocaine cartel.<sup>1</sup> Weinig also actively participated in a kidnapping and extortion plot.<sup>2</sup>

The efforts that led to Weinig's conviction began in February 1994 when the Federal Bureau of Investigation, the Drug Enforcement Administration, and the New York City Police

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<sup>1</sup> See U.S. Probation Office (S.D.N.Y.) Document Production (Pre-sentence Investigation Report, *U.S. v. Weinig* (S.D.N.Y. Mar. 19, 1996)) at 14 (Exhibit 1); NARA Document Production (Letter from Mark P. Goodman, Assistant U.S. Attorney for the S.D.N.Y., Department of Justice, to John R. Wing, Member, Weil, Gotshal & Manges (Sept. 20, 1995)) (Exhibit 2).

<sup>2</sup> See U.S. Probation Office (S.D.N.Y.) Document Production (Pre-sentence Investigation Report, *U.S. v. Weinig* (S.D.N.Y. Mar. 19, 1996)) at 29 (Exhibit 1).

Department jointly investigated a large international money laundering organization.<sup>3</sup> Ultimately, the organization was found to have laundered tens of millions of dollars in narcotics proceeds generated in the U.S., Puerto Rico, and other locations.<sup>4</sup> In connection with that investigation, law enforcement authorities seized almost \$5 million in drug proceeds from members of the organization.<sup>5</sup>

#### **A. Weinig and His Co-Conspirators**

As members of the money laundering organization, Weinig and his law partner, Robert Hirsch, used their firm, Hirsch Weinig, to launder drug proceeds for the benefit of their clients, including members of the Cali cocaine cartel in Colombia.<sup>6</sup> After Weinig and Hirsch formed their partnership in October 1993, they helped a German resident named Tohmes Peter retrieve large sums of money that had been seized by law enforcement due to a suspicion that the money was related to drug sales.<sup>7</sup> To assist in the effort, Weinig recruited Richard Spence, a client and former New York City fireman who became a leader of the money laundering organization.<sup>8</sup> Weinig and Hirsch incorporated Transglobal Import Export Trading Co., Inc., so that Spence could open a corporate bank account through which he could operate his end of the money laundering scheme.<sup>9</sup>

Weinig, Hirsch, and Spence divided responsibilities in the money laundering operation. Weinig conducted banking transactions for the organization and consulted with co-conspirators Hirsch and Richard Spence about the organization's activities.<sup>10</sup> Weinig also stored the proceeds from the money laundering operation in his New York City apartment.<sup>11</sup> Hirsch coordinated laundering activities with Spence in New York, Tohmes Peter and Juan Guillermo Ocampo in Germany, and Leon Shulum Weinmann and his wife, Rachel, in Switzerland.<sup>12</sup> As part of the money laundering conspiracy, the Weinmanns received money transfers in Switzerland and remitted them to bank accounts designated by their principals.<sup>13</sup> Spence was responsible for organizing pickups of the drug money, depositing the money into bank accounts without raising suspicion, and wire-transferring the money to various other accounts with the intent of concealing its nature and source.<sup>14</sup>

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<sup>3</sup> *Id.* at 17.

<sup>4</sup> *Id.* at 22.

<sup>5</sup> *Id.*

<sup>6</sup> *See id.* at 19 (describing co-defendants Miguel Omar Garrabito Botero, Amparo Hurtado Valencia, Juliana (last name unknown), and Carlos Lopez as associated with Cali cocaine cartel).

<sup>7</sup> NARA Document Production (Report to the President on Proposed Denial of Executive Clemency for Harvey Weinig) at 2 (Exhibit 3).

<sup>8</sup> *See id.*

<sup>9</sup> *See id.*

<sup>10</sup> U.S. Probation Office (S.D.N.Y.) Document Production (Pre-sentence Investigation Report, *U.S. v. Weinig* (S.D.N.Y. Mar. 19, 1996)) at 18 (Exhibit 1).

<sup>11</sup> *Id.*

<sup>12</sup> *Id.* at 19. Ocampo was previously convicted in New York of selling narcotics, for which he was sentenced to 5 years to life imprisonment and released on parole in or about May 1987. *Id.* In September 1994, Ocampo was re-arrested in Colombia. *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

Other co-conspirators included Michael Kalanz, a police officer at the 48th Precinct in the Bronx, who counted, stored (sometimes in his locker at the Precinct), and transported hundreds of thousands of dollars in drug proceeds; Charles Bruno, a New York City fireman who acted as a courier; Alexander Schwartz, a rabbi who picked up drug proceeds throughout the U.S. and returned them to New York City; Latchezar Christov, reportedly a Bulgarian diplomat who received drug proceeds in California and shipped them via overnight courier to New York City; and Gary Salerno, an enforcer of the money laundering organization who intimidated and collected money from various individuals.<sup>15</sup>

## **B. The Money Laundering Operation**

The money laundering conspiracy typically operated as follows. A narcotics trafficker or his representative (for example, Juan Guillermo Ocampo) would contact a member of the money laundering network (for example, Spence and later Hirsch) to pick up a parcel of cash on the street or in a hotel in a particular city.<sup>16</sup> The cash in those parcels was generated from street sales of cocaine and totaled anywhere from tens of thousands to hundreds of thousands of dollars.<sup>17</sup> A member of the network, sometimes a courier, would then retrieve the parcel at the given location and deliver it to a leader in the network (for example, Spence) who would count and deposit the money into bank accounts controlled by Weinig, Hirsch, or Spence.<sup>18</sup> From such accounts, Weinig, Hirsch, or Spence would then transfer the money by wire or other means to the Weinmanns in Switzerland or elsewhere.<sup>19</sup> Through a foreign money exchange, the drug

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<sup>15</sup> *Id.* at 19-21. See also Joseph B. Treaster, *U.S. Says It Uncovered a \$100 Million Drug-Money Laundry*, N.Y. TIMES, Dec. 1, 1994, at B1; John J. Goldman, “White-Collar” Money Laundry Is Smashed Crime: Lawyers, Rabbis, a Police Officer and an L.A. Diplomat are Among 23 Charged. Ring Handled Tens of Millions of Dollars in Drug Proceeds, Officials Say, L.A. TIMES, Dec. 1, 1994, at A7. On July 21, 1994, Salerno was arrested by NYPD for extortion involving physical injury and attempted grand larceny; and, on November 16, 1994, he was arrested for conspiracy to traffick in firearms, a federal offense. U.S. Probation Office (S.D.N.Y.) Document Production (Pre-sentence Investigation Report, *U.S. v. Weinig* (S.D.N.Y. Mar. 19, 1996)) at 20 (Exhibit 1). A contemporaneous search of Salerno’s residence uncovered a “hitman’s kit” containing a garrotte (a device used to strangle and sever the vocal chords of the intended victim), three pairs of handcuffs, a handgun, two rifles, ammunition, a law enforcement badge bearing the name of another, and a bugging device. *Id.*

<sup>16</sup> Telephone Interview with Mark Levin, former Special Agent, Drug Enforcement Administration (Mar. 22, 2001). During the federal investigation of Weinig’s money laundering activities, Levin was with the New York field division of the DEA and was the primary case agent in the investigation. See also U.S. Probation Office (S.D.N.Y.) Document Production (Pre-sentence Investigation Report, *U.S. v. Weinig* (S.D.N.Y. Mar. 19, 1996)) at 22 (Exhibit 1). After Peter and Ocampo began contacting Hirsch directly in the U.S., Hirsch contacted Spence, who would arrange for the cash to be picked up and retrieved back to him in New York. *Id.* Hirsch’s increased involvement in the conspiracy was corroborated by his attendance at meetings in Switzerland with, among others, Weinmann and Peter from January 31, 1994, through February 1, 1994. *Id.* At that meeting, during which the network’s laundering activities were discussed, the Weinmanns reportedly stated that they, with Peter’s assistance, laundered about \$72 million. *Id.*

<sup>17</sup> Telephone Interview with Mark Levin, former Special Agent, Drug Enforcement Administration (Mar. 22, 2001); U.S. Probation Office (S.D.N.Y.) Document Production (Pre-sentence Investigation Report, *U.S. v. Weinig* (S.D.N.Y. Mar. 19, 1996)) at 22 (Exhibit 1).

<sup>18</sup> See Telephone Interview with Mark Levin, former Special Agent, Drug Enforcement Administration (Mar. 22, 2001). See also U.S. Probation Office (S.D.N.Y.) Document Production (Pre-sentence Investigation Report, *U.S. v. Weinig* (S.D.N.Y. Mar. 19, 1996)) at 22-23 (Exhibit 1).

<sup>19</sup> Telephone Interview with Mark Levin, former Special Agent, Drug Enforcement Administration (Mar. 22, 2001); U.S. Probation Office (S.D.N.Y.) Document Production (Pre-sentence Investigation Report, *U.S. v. Weinig*

proceeds would then be auctioned to “brokers” who typically bid about 85 cents on the dollar for \$10 million to \$20 million bundles.<sup>20</sup> The brokers would then generally have to return 85 percent of the cash to the Weinmanns within a fixed period.<sup>21</sup> With the proceeds safely laundered, the Weinmanns would send the cash to bank accounts designated by their principals in Colombia.<sup>22</sup> Members of the organization would ultimately be compensated for their services by receiving about 7 percent of the amount laundered, which between 1993 and 1994 equaled between \$70 million and \$100 million.<sup>23</sup>

### C. Weinig and His Co-Conspirators Run Afoul of the Colombian Cocaine Cartel

The organization lost money throughout 1993 and 1994, when law enforcement arrested some of its couriers in San Juan, Puerto Rico, and Houston, Texas, and seized drug proceeds they carried.<sup>24</sup> In response to those seizures, Weinig, Hirsch, and Spence filed fraudulent claims of ownership with the DEA, typically asserting that the money seized from their couriers represented the proceeds of payment “for a sale of precious stones [by Spence] . . . acquired and sold overseas.”<sup>25</sup>

The organization also lost money when some of its members, including Weinig, Hirsch, and Spence, stole from Colombian drug dealers about \$2.5 million they were supposed to have

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(S.D.N.Y. Mar. 19, 1996)) at 22-23 (Exhibit 1). Joseph B. Treaster, *U.S. Says It Uncovered a \$100 Million Drug-Money Laundry*, N.Y. TIMES, Dec. 1, 1994, at B1.

<sup>20</sup> Telephone Interview with Mark Levin, former Special Agent, Drug Enforcement Administration (Mar. 22, 2001); Timothy O’Brien, *Embarrassment of Riches: Cartels Use U.S. Lawyers to Launder Drug Fortunes*, ASIAN WALL ST. J., May 30, 1995, at A1.

<sup>21</sup> Telephone Interview with Mark Levin, former Special Agent, Drug Enforcement Administration (Mar. 22, 2001); Timothy O’Brien, *Embarrassment of Riches: Cartels Use U.S. Lawyers to Launder Drug Fortunes*, ASIAN WALL ST. J., May 30, 1995, at A1.

<sup>22</sup> Telephone Interview with Mark Levin, former Special Agent, Drug Enforcement Administration (Mar. 22, 2001); U.S. Probation Office (S.D.N.Y.) Document Production (Pre-sentence Investigation Report, *U.S. v. Weinig* (S.D.N.Y. Mar. 19, 1996)) at 23 (Exhibit 1). See also Joseph B. Treaster, *U.S. Says It Uncovered a \$100 Million Drug-Money Laundry*, N.Y. TIMES, Dec. 1, 1994, at B1.

<sup>23</sup> Telephone Interview with Mark Levin, former Special Agent, Drug Enforcement Administration (Mar. 22, 2001); U.S. Probation Office (S.D.N.Y.) Document Production (Pre-sentence Investigation Report, *U.S. v. Weinig* (S.D.N.Y. Mar. 19, 1996)) at 22-23 (Exhibit 1). When the co-conspirators of the money laundering ring discussed their activities over the phone, they often used coded language to conceal the actual nature of their conversations. For example, they referred to money as “paper” and units of \$1 million as “containers.” *Id.* at 18. See also Timothy O’Brien, *Embarrassment of Riches: Cartels Use U.S. Lawyers to Launder Drug Fortunes*, ASIAN WALL ST. J., May 30, 1995, at A1.

<sup>24</sup> U.S. Probation Office (S.D.N.Y.) Document Production (Pre-sentence Investigation Report, *U.S. v. Weinig* (S.D.N.Y. Mar. 19, 1996)) at 23 (Exhibit 1).

<sup>25</sup> *Id.* at 25. On November 4, 1993, the Hirsch Weinig law firm filed a complaint in federal court alleging that a hotel allowed someone to take a suitcase containing \$260,000, which was left by Rabbi Alexander Schwartz, one of their couriers. *Id.* at 24-25. The firm subsequently filed, on February 14, 1994, a claim of ownership with the DEA for entitlement to those proceeds. *Id.* at 25. The law firm also filed three false claims on July 13, 1994, for \$1,053,200 (with respect to a seizure from another courier, Charles Bruno), \$1,010, and \$802,893. The law firm filed another false claim on March 24, 1994, for \$676,392 (with respect to proceeds seized from Gary Salerno). *Id.* at 25-26. Weinig contended that, despite being aware of the filing of those documents, he was not personally involved in their preparation or filing. *Id.*

laundered.<sup>26</sup> To conceal their theft from the Colombians, Weinig, Hirsch, and Spence drafted a bogus indictment and notice of seizure to induce their principals in Colombia into believing that their money was seized by law enforcement when Spence was “arrested.”<sup>27</sup> In October 1994, law enforcement intercepted Weinig’s explanation to Hirsch of his theft from the organization:

Weinig: And all of the sudden, someone says to me, I can put a million in cash in your . . .

Hirsch: Oh, God. I’m sick.

Weinig: In your, in your attic. I do a quick analysis, and understand that if everything else goes wrong in the world for the rest of my life, a million in cash takes care of everything I’ll ever need.

Hirsch: That’s true.

Weinig: And so I said, I’m dealing with people, and I remember this was, this was my approach. We’re dealing with people who are total a\*\*holes, who are out of control, who are scumbag, lying, cheats. And I am gonna be in this for the long haul? F\*\*k ‘em! F\*\*k ‘em! I’m taking a million dollars and let’s, let’s see you get it from me. That was my approach.

Hirsch: But remember the other . . .

Weinig: A million f\*\*king dollars.

Hirsch: A million dollars, but where, you know . . .

Weinig: This is not . . .

Hirsch: How much you would have had today?

Weinig: This is not, this is dealing with normal Americans. This is dealing with guys I wouldn’t take a telephone call from.<sup>28</sup>

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<sup>26</sup> Joseph B. Treaster, *U.S. Says It Uncovered a \$100 Million Drug-Money Laundry*, N.Y. TIMES, Dec. 1, 1994, at B1.

<sup>27</sup> *Id.* at 23-24. Weinig asserts that the indictment was created by Hirsch alone. *Id.* at 24. A member of the organization who was conducting activities from Germany reportedly lost so much money that he began speculating in commodities to recoup the losses but then lost even larger sums on poorly placed market gambles. Timothy O’Brien, *Embarrassment of Riches: Cartels Use U.S. Lawyers to Launder Drug Fortunes*, ASIAN WALL ST. J., May 30, 1995, at A1.

<sup>28</sup> See U.S. District Court (S.D.N.Y.) Document Production (Letter from Lev L. Dassin, Assistant U.S. Attorney for the S.D.N.Y., and Mark P. Goodman, Special Assistant U.S. Attorney for the S.D.N.Y., Department of Justice, to the Honorable Kevin Thomas Duffy, U.S. District Court Judge (Mar. 21, 1996)) at 3-4 (Exhibit 4) (transcription of conversation between Harvey Weinig and Robert Hirsch recorded in October 1994).



As the foregoing indicates, Weinig believed that because his clients were unsavory he was justified in stealing their drug proceeds. To account for the millions in drug proceeds they stole from their Colombian principals, Weinig, Hirsch, and Spence planned to divide it among themselves and allow Spence to disappear, letting their principals believe that Spence was arrested and imprisoned.<sup>29</sup> Plainly, Weinig's decision to steal from the Colombian drug traffickers exposed him, his co-conspirators, all of their families, and various innocent bystanders to a considerable risk of harm.

The theft of the drug money by Weinig, Hirsch, and Spence ultimately led to the unraveling of the money laundering conspiracy and to Weinig's imprisonment. In late 1994, leaders in the Cali cartel apparently decided that Hirsch had stolen money from them and sent two individuals, Miguel Omar Garrabito Botero and Amparo Hurtado Valencia, to "convince" him to return the money.<sup>30</sup> Hirsch indicated that he would attempt to get the money together.<sup>31</sup> Unknown to Hirsch and the Colombians, law enforcement was monitoring these discussions and approached Hirsch to obtain his cooperation.<sup>32</sup> Law enforcement also informed Hirsch that the Colombians had decided to kill him and had, in fact, dispatched a hitman to New York.<sup>33</sup> Once provided with this information, Hirsch began cooperating with the investigation of the money laundering network.<sup>34</sup> Over the next several months, the money laundering network had meetings to address the actual and the fictitious seizures.<sup>35</sup> With Hirsch's cooperation, many of those meetings were observed or recorded by law enforcement.<sup>36</sup>

As money owed to the cartel became more of a problem, Weinig decided to extend his criminal activities beyond money laundering. On November 15, 1994, Spence told Weinig that

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<sup>29</sup> *Id.*

<sup>30</sup> U.S. Probation Office (S.D.N.Y.) Document Production (Pre-sentence Investigation Report, *U.S. v. Weinig* (S.D.N.Y. Mar. 19, 1996)) at 24 (Exhibit 1). Botero and Valencia similarly threatened Tohmes Peter and Juan Ocampo, both of whom conducted money laundering activities for the organization from Mulheim, Germany. *Id.* Ocampo's brother was apparently kidnapped in Colombia. *Id.* There is no doubt that Weinig was aware of the risk of harm his theft from the cartel created. On September 30, 1994, Hirsch told Weinig that Botero was the principal "of everyone" in Colombia and explained to him the financial difficulties that arose from the debt owed to Botero. *Id.* at 27. Weinig acknowledged the problem and said, "[L]isten, let's not talk about this on the phone." *Id.* In response to Hirsch's request for the telephone number for his private line at the office, Weinig noted that he did not think that his private line was any more secure than the line on which they were speaking. *Id.* Hirsch also told Weinig that, in a previous conversation with Botero, Botero implied that Ocampo might be dead. Weinig replied, "[L]et's not talk about it." *Id.* See Joseph B. Treaster, *U.S. Says It Uncovered a \$100 Million Drug-Money Laundry*, N.Y. TIMES, Dec. 1, 1994, at B1.

<sup>31</sup> U.S. Probation Office (S.D.N.Y.) Document Production (Pre-sentence Investigation Report, *U.S. v. Weinig* (S.D.N.Y. Mar. 19, 1996)) at 27 (Exhibit 1) (describing that Hirsch, Weinig, and Spence pooled together some of the money they had stolen and sent it to their clients in Colombia).

<sup>32</sup> Telephone Interview with Mark Levin, former Special Agent, Drug Enforcement Administration (Mar. 22, 2001); Timothy O'Brien, *Embarrassment of Riches: Cartels Use U.S. Lawyers to Launder Drug Fortunes*, ASIAN WALL ST. J., May 30, 1995, at A1.

<sup>33</sup> *Id.*

<sup>34</sup> Telephone Interview with Lev L. Dassin, former Assistant U.S. Attorney for the S.D.N.Y., Department of Justice (Nov. 26, 2001).

<sup>35</sup> Telephone Interview with Mark Levin, former Special Agent, Drug Enforcement Administration (Mar. 22, 2001); U.S. Probation Office (S.D.N.Y.) Document Production (Pre-sentence Investigation Report, *U.S. v. Weinig* (S.D.N.Y. Mar. 19, 1996)) at 23 (Exhibit 1).

<sup>36</sup> *Id.*

he had kidnapped an individual named James Clooney, who had swindled him out of \$237,000 by tricking him into investing in an insolvent company.<sup>37</sup> Although Clooney had assets that would have enabled Spence to recover part of his loss, Clooney would not return Spence's money.<sup>38</sup> While Weinig was abroad between November 9 and 13, 1994, Spence had Clooney kidnapped to "compel him to return the money that he had wrongfully taken."<sup>39</sup> On November 15, 1994, Weinig told Hirsch that Spence "seized a person."<sup>40</sup> After Hirsch joked with him that Spence "learned it from the Colombians," Weinig continued, "[Clooney] will be released as soon as his family produces money[.]"<sup>41</sup> Hirsch responded, "Wait a minute. Hold it, hold it. Dick Spence is holding someone hostage and you're sitting here? . . . He's holding a person and you really don't see any problem with that?"<sup>42</sup> Hirsch observed that Clooney might notify the authorities, but Weinig replied, "Well, he's not in a position to call the police at this point, right?"<sup>43</sup> Weinig rationalized Clooney's abduction by noting, "You know [Spence is] kidnapping someone who owes him money here."<sup>44</sup> He continued, "It's not drug money, it's money. He's lost some good money."<sup>45</sup> Weinig apparently felt that his role as a lawyer might conflict with his participation in a kidnapping. He therefore attempted to justify his involvement to Hirsch:

We didn't do it. I don't know anything about it. If he tells me a crime is going to be committed, then I have an obligation, I have to disclose it or go to the authorities. . . . But he didn't do that. He just talked to me a few times about "I couldn't just sit around and wait so I had some goons go talk to the guy and they're gonna make sure the money comes this week."<sup>46</sup>

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<sup>37</sup> NARA Document Production (Report to the President on Proposed Denial of Executive Clemency for Harvey Weinig) at 3-5 (Exhibit 3); U.S. Probation Office (S.D.N.Y.) Document Production (Pre-sentence Investigation Report, *U.S. v. Weinig* (S.D.N.Y. Mar. 19, 1996)) at 29 (Exhibit 1); U.S. District Court (S.D.N.Y.) Document Production (Letter from Lev L. Dassin, Assistant U.S. Attorney for the S.D.N.Y., and Mark P. Goodman, Special Assistant U.S. Attorney for the S.D.N.Y., Department of Justice, to the Honorable Kevin Thomas Duffy, U.S. District Court Judge (Mar. 21, 1996)) at 6 (Exhibit 4).

<sup>38</sup> NARA Document Production (Report to the President on Proposed Denial of Executive Clemency for Harvey Weinig) at 3-5 (Exhibit 3); U.S. Probation Office (S.D.N.Y.) Document Production (Pre-sentence Investigation Report, *U.S. v. Weinig* (S.D.N.Y. Mar. 19, 1996)) at 29 (Exhibit 1); U.S. District Court (S.D.N.Y.) Document Production (Letter from Lev L. Dassin, Assistant U.S. Attorney for the S.D.N.Y., and Mark P. Goodman, Special Assistant U.S. Attorney for the S.D.N.Y., Department of Justice, to the Honorable Kevin Thomas Duffy, U.S. District Court Judge (Mar. 21, 1996)) at 6 (Exhibit 4).

<sup>39</sup> Lev Dassin Document Production at 11 (Letter from John R. Wing, Member, Weil, Gotshal & Manges, to Mary Jo White, U.S. Attorney for the S.D.N.Y., Department of Justice (Feb. 28, 1997)) (Exhibit 5). *See also* U.S. District Court (S.D.N.Y.) Document Production (Letter from Lev L. Dassin, Assistant U.S. Attorney for the S.D.N.Y., Department of Justice, to the Honorable Kevin Thomas Duffy, U.S. District Court Judge (Mar. 19, 1996)) (Exhibit 6) (transcript of conversation between Harvey Weinig and Robert Hirsch recorded on November 15, 1994).

<sup>40</sup> *Id.*

<sup>41</sup> *Id.*

<sup>42</sup> *Id.* at 5-6.

<sup>43</sup> *Id.* at 6.

<sup>44</sup> *Id.*

<sup>45</sup> *Id.* at 25.

<sup>46</sup> NARA Document Production (Report to the President on Proposed Denial of Executive Clemency for Harvey Weinig) at 4 (Exhibit 3).

Clooney was released the following day on the condition that he surrender his artwork and a home mortgage to settle his debt to Spence.<sup>47</sup> Weinig offered his office as a meeting place where Clooney could convey the ransom and instructed two of his associates to execute transfer agreements when Clooney and his girlfriend arrived at the office.<sup>48</sup> However, he left before they arrived.<sup>49</sup>

#### **D. Weinig's Prosecution and Sentencing**

Robert Hirsch was arrested in September 1994 and, with Spence, subsequently cooperated with authorities in their investigation of the remaining members of the money laundering organization.<sup>50</sup> On November 30, 1994, Weinig and the remaining members of the organization, including Tohmes Peter, were arrested.<sup>51</sup> Weinig was subsequently released on bail.<sup>52</sup> Weinig was indicted on December 22, 1994, and April 20, 1995, with several co-defendants in the Southern District of New York for conspiring to launder drug proceeds, 15 counts of money laundering, two counts of interstate transportation of stolen money, wire fraud, three counts of making false statements to federal authorities, and criminal forfeiture.<sup>53</sup> On September 21, 1995, Weinig was charged under a separate indictment with interfering with commerce by extortion arising from his participation in Spence's abduction of Clooney.<sup>54</sup>

Shortly before Weinig was to go to trial on money laundering charges, he pleaded guilty to conspiring to launder drug money for the Cali cocaine cartel and to owning or controlling

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<sup>47</sup> U.S. District Court (S.D.N.Y.) Document Production (Letter from Lev L. Dassin, Assistant U.S. Attorney for the S.D.N.Y., and Mark P. Goodman, Special Assistant U.S. Attorney for the S.D.N.Y., Department of Justice, to the Honorable Kevin Thomas Duffy, U.S. District Court Judge (Mar. 21, 1996)) at 7-8 (Exhibit 4).

<sup>48</sup> *Id.* at 8. Specifically, Weinig instructed two attorneys at the firm to receive the ransom from Clooney. *Id.*

<sup>49</sup> *Id.*

<sup>50</sup> Telephone Interview with Lev L. Dassin, former Assistant U.S. Attorney for the S.D.N.Y., Department of Justice (Nov. 26, 2001); U.S. District Court (S.D.N.Y.) Document Production (Letter from Lev L. Dassin, Assistant U.S. Attorney for the S.D.N.Y., and Mark P. Goodman, Special Assistant U.S. Attorney for the S.D.N.Y., Department of Justice, to the Honorable Kevin Thomas Duffy, U.S. District Court Judge (Mar. 21, 1996)) at 2 (Exhibit 4). *See* Telephone Interview with Mark Levin, former Special Agent, Drug Enforcement Administration (Mar. 22, 2001).

<sup>51</sup> U.S. Probation Office (S.D.N.Y.) Document Production (Pre-sentence Investigation Report, *U.S. v. Weinig* (S.D.N.Y. Mar. 19, 1996)) at 29 (Exhibit 1). *See also* NARA Document Production (Criminal Complaint, *U.S. v. Weinig* (S.D.N.Y. Nov. 29, 1994)) (Exhibit 7); NARA Document Production (Affidavit of Special Agent Jeffrey Drubner, *In Re Application for Arrest and Search Warrant* (S.D.N.Y. Nov. 29, 1994)) (Exhibit 8). The best recollection of those involved in Weinig's arrest is that he was taken into custody at his home, without incident, and outside the view of his children. *See, e.g.,* Telephone Interview with Lev Dassin, former Assistant U.S. Attorney for the S.D.N.Y., Department of Justice (Nov. 26, 2001).

<sup>52</sup> U.S. Probation Office (S.D.N.Y.) Document Production (Pre-sentence Investigation Report, *U.S. v. Weinig* (S.D.N.Y. Mar. 19, 1996)) at 29 (Exhibit 1).

<sup>53</sup> U.S. District Court (S.D.N.Y.) Document Production (Indictment, *U.S. v. Weinig* (S.D.N.Y. Dec. 22, 1994)) (Exhibit 9); U.S. District Court (S.D.N.Y.) Document Production (Indictment, *U.S. v. Weinig* (S.D.N.Y. Apr. 20, 1995)) (Exhibit 10); U.S. Probation Office (S.D.N.Y.) Document Production (Pre-sentence Investigation Report, *U.S. v. Weinig* (S.D.N.Y. Mar. 19, 1996)) at 4 (Exhibit 1).

<sup>54</sup> U.S. District Court (S.D.N.Y.) Document Production (Indictment, *U.S. v. Weinig*, S2 95 CR-167 (KTD) (S.D.N.Y. Sept. 21, 1995)); U.S. Probation Office (S.D.N.Y.) Document Production (Pre-sentence Investigation Report, *U.S. v. Weinig* (S.D.N.Y. Mar. 19, 1996)) at 13 (Exhibit 1).

property that was involved in and traceable to the money laundering conspiracy.<sup>55</sup> Weinig's plea to those charges resulted in his forfeiture of various personal and business assets, including his summer home, proceeds traceable to his money laundering activities, and personal and business bank accounts.<sup>56</sup> Weinig also pleaded guilty to knowingly concealing from law enforcement authorities Spence's abduction of Clooney for the purpose of extorting the payment of ransom.<sup>57</sup> Because he waited until the eve of trial to plead guilty and did not cooperate with law enforcement, Weinig did not receive any credit for cooperation in the plea agreement.<sup>58</sup>

The documents relating to Weinig's plea show that he failed not only to cooperate with law enforcement but also to accept responsibility for his actions. In his allocution before Judge Kevin T. Duffy, Weinig stated that he originally believed representations made by Hirsch that Tohmes Peter was involved in the "worldwide distribution of parallel market or greige market goods, including electronic equipment, computer equipment, health and beauty aids, and other commodities[.]" not money laundering.<sup>59</sup> But, Weinig conceded that "[f]rom the very start . . . [he] had misgivings about the highly unconventional nature of the activity in which [Peter] was engaged" and "[a]s time went on, [he] deliberately ignored obvious indications that these monies were, in fact, the proceeds of illicit drug transactions, and eventually [he] was fully aware of this fact."<sup>60</sup> Weinig admitted that he ignored the following indicators: DEA statements that the proceeds at issue were drug-related; the "highly unconventional locations, . . . [h]otel rooms, street corners and empty cars in parking lots where the money was transferred"; that "[his law] office never saw documents that would ordinarily underlie a commercial transaction"; and that he received "what [he] perceived to be an unreasonably large amount of money in relation to the business being conducted."<sup>61</sup> However, Weinig argued that, with respect to the money laundering operation, he was less involved than were Hirsch and Spence in the operation's day-to-day operations.<sup>62</sup> Regarding his role in the kidnapping scheme, Weinig maintained that he was not told about the extortion-by-kidnapping scheme until after Clooney was abducted.<sup>63</sup>

In reply to Weinig's claims, the Government argued that Weinig was in fact centrally involved in the money laundering organization with Hirsch and Spence from its inception and played an important role in the kidnapping.<sup>64</sup> In support of its position, the Government cited

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<sup>55</sup> *Id.* at 14. See also NARA Document Production (Letter from Mark P. Goodman, Assistant U.S. Attorney for the S.D.N.Y., Department of Justice, to John R. Wing, Member, Weil, Gotshal & Manges (Sept. 20, 1995)) (Exhibit 2) (plea agreement).

<sup>56</sup> *Id.* at 16-17.

<sup>57</sup> *Id.* at 14. Under 18 U.S.C. § 4 (2000) of the federal criminal code, this offense is referred to as "misprision of a felony."

<sup>58</sup> Telephone Interview with Lev L. Dassin, former Assistant U.S. Attorney for the S.D.N.Y., U.S. Department of Justice (Nov. 26, 2001).

<sup>59</sup> NARA Document Production (Report to the President on Proposed Denial of Executive Clemency for Harvey Weinig) at 6 (Exhibit 3) (quoting transcript of allocution).

<sup>60</sup> *Id.*

<sup>61</sup> *Id.* at 6 n.14.

<sup>62</sup> U.S. District Court (S.D.N.Y.) Document Production (Letter from Lev L. Dassin, Assistant U.S. Attorney for the S.D.N.Y., and Mark P. Goodman, Special Assistant U.S. Attorney for the S.D.N.Y., for Mary Jo White, U.S. Attorney for the S.D.N.Y., Department of Justice, to the Honorable Kevin Thomas Duffy, U.S. District Court Judge (Mar. 21, 1996)) at 1 (Exhibit 4).

<sup>63</sup> *Id.*

<sup>64</sup> *Id.* at 1-9.

private statements and proffers made by Hirsch and Spence, both of whom cooperated with the Government from the date of their arrest.<sup>65</sup> In particular, the Government noted that both Hirsch and Spence had consistently stated that Weinig was generally aware of the organization's day-to-day activities and had spoken to them about those activities frequently.<sup>66</sup> The Government also cited various wiretapped conversations, which clearly and consistently inculcated Weinig.<sup>67</sup> The Government also argued that the level of Hirsch's and Spence's involvement in the organization was irrelevant to Weinig's sentencing.<sup>68</sup> According to the Government, Weinig's conduct was "extremely serious and reprehensible" and was motivated by "unmitigated, unrelenting greed and arrogance."<sup>69</sup> With regard to Weinig's role in the extortion scheme, the Government argued that, for sentencing purposes, Weinig's activities should be considered independent of those of the other criminals involved and characterized his conduct, particularly inasmuch as Weinig was a lawyer, as "chilling."<sup>70</sup>

Judge Duffy agreed. On March 22, 1996, he sentenced Weinig to the maximum sentence under federal guidelines – 11 years and three months.<sup>71</sup> Before he did so, John Wing, Weinig's attorney, asked for leniency:

Your Honor, when my kids were young, I was familiar with that Sesame Street character Big Bird and a song he used to sing about how everybody makes mistakes, big people, small people, as a matter of fact, law people. It's probably a different version of the doctrine of original sin, but Harvey Weinig made some business mistakes[.]<sup>72</sup>

Wing continued by noting that his client "did not sit down and make a conscious, knowing decision to initiate and enter into a business of laundering drug proceeds."<sup>73</sup> Rather, according to Wing, Weinig was misled by his law partner, Robert Hirsch, "a man he liked, respected, trusted, someone he thought was smart," into believing that they were handling "gray market" forfeiture cases unrelated to narcotics trafficking.<sup>74</sup> However, Wing conceded that after Weinig learned about the true nature of the business, "[he] stayed in. [He] made money. He liked having the security."<sup>75</sup> Wing then discussed Weinig's role in the extortion by kidnapping scheme, which he characterized as "also somewhat bizarre."<sup>76</sup> Wing conceded that, with full knowledge of the

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<sup>65</sup> Telephone Interview with Lev L. Dassin, former Assistant U.S. Attorney for the S.D.N.Y., Department of Justice (Nov. 26, 2001); U.S. District Court (S.D.N.Y.) Document Production (Letter from Lev L. Dassin, Assistant U.S. Attorney for the S.D.N.Y., and Mark P. Goodman, Special Assistant U.S. Attorney for the S.D.N.Y., Department of Justice, to the Honorable Kevin Thomas Duffy, U.S. District Court Judge (Mar. 21, 1996)) at 2 (Exhibit 4).

<sup>66</sup> *Id.* at 3.

<sup>67</sup> *Id.*

<sup>68</sup> *Id.*

<sup>69</sup> *Id.* at 6.

<sup>70</sup> *Id.*

<sup>71</sup> U.S. District Court (S.D.N.Y.) Document Production (Transcript of Sentencing Hearing, *U.S. v. Weinig, et al.* (S.D.N.Y. Mar. 22, 1996)) at 14 (Exhibit 11).

<sup>72</sup> *Id.* at 2-3.

<sup>73</sup> *Id.* at 5.

<sup>74</sup> *Id.*

<sup>75</sup> *Id.* at 7.

<sup>76</sup> *Id.*

abduction scheme, Weinig “basically let it happen. He didn’t stop it.”<sup>77</sup> In an attempt to offset the seriousness of Weinig’s criminal conduct, Wing mentioned Weinig’s character, the harm his behavior visited on his family, and the legal assistance Weinig occasionally made available to various friends without charge.<sup>78</sup>

Speaking for himself at sentencing, Weinig conveyed to Judge Duffy, among other things, that “today marks yet another milestone in the nightmare from which I am unable to awake.”<sup>79</sup> But Judge Duffy observed the following with regard to Weinig’s involvement in the kidnapping scheme:

You know, you talk about a nightmare. Nightmares come from the unconscious, the subconscious. What you are facing is something that you were conscious or you got yourself into. . . . The suggestion has been made that you are a very altruistic person, that you are a great guy . . . . I don’t know . . . . What would you have done, Mr. Weinig, if your son Jacob had been kidnapped and some lawyer knew about it . . . and didn’t do anything? . . . I insisted on getting the tape and listening to your conversation with Hirsch when you talk about it, very flip, matter of fact. You couldn’t care less, but if it had been your son, you would have cared more. . . . You apparently were able to divide yourself in two, outside the office and inside. Even when Clooney came in, your attorney says you let it happen. Sure you let it happen, because you went, and you stuck two young associates with the job of cleaning it up.<sup>80</sup>

With regard to Weinig’s involvement in the money laundering operation, Judge Duffy noted the following:

The suggestion is made that you are not smart or sophisticated. I can’t believe that. You thought that the money laundering was coming in gray market goods. But even you admit that you knew where it was coming from, at least at the end.

What are we talking about? Well the figures vary, from 72 million dollars, that the Swiss bankers claimed to have laundered, to nineteen, which I understand you are accused of. Nineteen million dollars in drugs is a lot of money. That much drugs is a lot of pain. If [your sons] Samuel or Jacob were the ones who were using the drugs, you would be singing a different story, an entirely different song.<sup>81</sup>

Judge Duffy thereupon noted that “if [this case] had been in the old days, I would have given [Weinig] the statutory maximum.”<sup>82</sup> On March 22, 1996, Judge Duffy sentenced Weinig to 135 months (11 years and three months) plus three years supervised release and a \$100 special

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<sup>77</sup> *Id.* at 9.

<sup>78</sup> *Id.* at 9-11.

<sup>79</sup> *Id.* at 11.

<sup>80</sup> *Id.* at 12-14.

<sup>81</sup> *Id.* at 14.

<sup>82</sup> *Id.*

assessment.<sup>83</sup> Even with credit for good behavior, Harvey Weinig would not get out of prison until 2005.

After his conviction in federal court, Weinig filed for resignation from the New York Bar with the Appellate Division of the State of New York. That court accepted Weinig's resignation, observing that "[its] review of the record in this matter reveals that respondent engaged in a course of conduct that can only be described as shocking and reprehensible for anyone, let alone a member of the bar."<sup>84</sup> The court also emphasized that if Weinig had not voluntarily resigned from the bar, a "serious crimes" hearing would have commenced with disbarment being "the only appropriate sanction."<sup>85</sup>

## **II. WEINIG'S EFFORTS TO OBTAIN EXECUTIVE CLEMENCY**

Soon after Weinig was imprisoned, John Wing, Weinig's criminal defense counsel, wrote a 34-page letter to the U.S. Attorney for the Southern District of New York, Mary Jo White, in which he sought a reduction in his sentence, citing the difference between Weinig's sentence and those of his co-conspirators.<sup>86</sup> The U.S. Attorney rejected Wing's request.<sup>87</sup> After that effort, Weinig focused his efforts on obtaining executive clemency.

### **A. Weinig Hires Reid Weingarten to Lobby for Clemency**

After Weinig was sent to prison, his wife, City University of New York law professor Alice Morey, explored ways of getting Weinig out of prison. Perhaps Morey's most important move was to hire Reid Weingarten, a prominent Washington attorney with close connections to the Clinton White House. Weingarten had represented a number of key figures in Clinton-era scandals, including Yah Lin "Charlie" Trie, Ron Brown, Mike Espy, and Pauline Kanchanalak. In representing these individuals, Weingarten had frequent contact with senior Clinton White House officials and their attorneys. Weingarten was also well-connected in the Justice Department, having served as a trial attorney in the Public Integrity Section.

A friend told Weingarten about the Weinig case in 1998 and asked him to meet with Weinig's wife.<sup>88</sup> Weingarten met with Morey, who was at her "wits end" because of Weinig's imprisonment and the harm his imprisonment had caused to her children.<sup>89</sup> Weingarten ultimately took the case because "the general sentiment was that the sentence was 'grossly

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<sup>83</sup> U.S. District Court (S.D.N.Y.) Document Production (Judgment and Commitment Order, *U.S. v. Weinig, et al.* (S.D.N.Y. Mar. 25, 1996)) (Exhibit 12). See *11-Year Sentence for Lawyers in Drug Case*, N.Y. TIMES, Mar. 23, 1996, at A25.

<sup>84</sup> *In re Weinig*, 642 N.Y.S.2d 654, 656 (N.Y. App. Div. 1996).

<sup>85</sup> *Id.* See also *Disciplinary Proceedings; Appellate Division; First Department*, N.Y. LAW J., May 20, 1996, at 5; *Today's News Update*, N.Y. LAW J., May 20, 1996, at 1.

<sup>86</sup> See generally Lev Dassin Document Production (Letter from John R. Wing, Member, Weil, Gotshal & Manges, to Mary Jo White, U.S. Attorney for the S.D.N.Y., Department of Justice (Feb. 28, 1997)) (Exhibit 5); Benjamin Weiser, *A Felon's Well-Connected Path to Clemency*, N.Y. TIMES, Apr. 14, 2001, at A1.

<sup>87</sup> Telephone Interview with Lev L. Dassin, former Assistant U.S. Attorney for the S.D.N.Y., Department of Justice (Nov. 26, 2001); Benjamin Weiser, *A Felon's Well-Connected Path to Clemency*, N.Y. TIMES, Apr. 14, 2001, at A1.

<sup>88</sup> Interview with Reid Weingarten, Partner, Steptoe & Johnson (Mar. 23, 2001).

<sup>89</sup> *Id.*

disproportionate.”<sup>90</sup> Accordingly, Weingarten prepared a clemency petition packet on Weinig’s behalf and attached letters submitted while Weinig was awaiting sentencing and written in support of the clemency petition itself.<sup>91</sup> In the petition, Weinig set forth his offenses as follows:

As to the first count, I assisted various individuals in laundering money, after realizing that the funds were proceeds of illegal drug sales. As to the second count, I became aware, after the fact, that a client of mine had detained an individual who had defrauded my client and owed my client money. I subsequently instructed associates in my law firm to prepare documentation that gave my client a security interest in some of the individual’s assets. I did not report to the authorities that my client had previously detained the individual.<sup>92</sup>

Weinig also observed that “[a]s to my client’s abduction of an individual, I did not learn of the kidnapping until after the individual had been released.”<sup>93</sup> As bases for the commutation of his sentence, Weinig argued that: (1) his sentence was grossly disproportionate to the sentences given to more culpable co-defendants and to money laundering sentences nationwide; (2) he had made and will continue to make contributions to society; and (3) his family and, in particular, his youngest son needed him to return home.<sup>94</sup>

Weingarten filed a copy of the petition with the Pardon Attorney’s Office at the Justice Department on April 3, 2000,<sup>95</sup> and with the White House Counsel’s Office on April 7, 2000.<sup>96</sup> Weingarten knew that the support of the prosecuting U.S. Attorney’s Office was critical because he had previously represented two clients in clemency proceedings (and prevailed in one of them).<sup>97</sup> Accordingly, he spoke with Deputy U.S. Attorney Shirah Neiman and Assistant U.S. Attorney Alan Kaufman in the Southern District of New York.<sup>98</sup> Weingarten knew that the prosecutors office had to be on board or the application was not going anywhere.<sup>99</sup> In Weingarten’s “spirited” conversation with Neiman and Kaufman, the prosecutors indicated that

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<sup>90</sup> *Id.*

<sup>91</sup> *Id.* See also NARA Document Production (Petition for Commutation of Sentence, Apr. 6, 2000) (Exhibit 13) (letters attached to petition not attached).

<sup>92</sup> *Id.*

<sup>93</sup> *Id.* (attachment).

<sup>94</sup> NARA Document Production (Harvey Weinig’s Memorandum in Support of His Petition for Commutation of Sentence, Apr. 6, 2000) at 6 (Exhibit 14) (originally attached to petition).

<sup>95</sup> NARA Document Production (Letter from Reid Weingarten, Partner, Steptoe & Johnson, to Roger Adams, Pardon Attorney, Department of Justice (Apr. 3, 2000)) (Exhibit 15); Interview with Reid Weingarten, Partner, Steptoe & Johnson (Mar. 23, 2001).

<sup>96</sup> NARA Document Production (Letter from Reid Weingarten, Partner, Steptoe & Johnson, to Beth Nolan, Counsel to the President, the White House (Apr. 7, 2000)) (Exhibit 16); Interview with Reid Weingarten, Partner, Steptoe & Johnson (Mar. 23, 2001). See also NARA Document Production (Letter from Reid Weingarten, Partner, Steptoe & Johnson, to Roger Adams, Pardon Attorney, Department of Justice (Apr. 3, 2000)) (Exhibit 17) (indicating, in note by Podesta to Nolan, “I need to discuss this one with you. Can you give me a call[?]”); NARA Document Production (Letter from Beth Nolan, Counsel to the President, the White House, to Reid Weingarten, Partner, Steptoe & Johnson (May 25, 2000)) (Exhibit 18) (drafts of letter attached).

<sup>97</sup> Interview with Reid Weingarten, Partner, Steptoe & Johnson (Mar. 23, 2001).

<sup>98</sup> *Id.*

<sup>99</sup> *Id.*



they would not recommend commutation of Weinig's sentence.<sup>100</sup> Therefore, sometime in the fall of 2000, Weingarten turned to Pardon Attorney Roger Adams.<sup>101</sup> Rather than persuade Adams to support commutation of Weinig's sentence, which he was confident he would not do, Weingarten intended only to have Adams "soften" his recommendation against granting Weinig clemency.<sup>102</sup> Weingarten failed, as is apparent from the Justice Department's report to President Clinton regarding Weinig's clemency petition, which is discussed below.

Weingarten then turned his attention to the White House. When Weingarten's practice occasionally required trips to the White House, he typically met with White House Counsel Beth Nolan, Deputy White House Counsel Bruce Lindsey, or Chief of Staff John Podesta.<sup>103</sup> Though Weingarten has no specific recollection of meetings he had with any of them regarding the Weinig matter, he is confident that he brought the matter up with them.<sup>104</sup> Weingarten implored those staff members to review the Weinig clemency petition, telling them "please read it, it sings."<sup>105</sup> He also communicated that Weinig was a "small fry in terms of culpability" and that the Weinig family believed that their youngest son's life was in jeopardy if Harvey Weinig was not released from prison.<sup>106</sup>

However, it appears that Weingarten was not well situated to lobby the White House on the Weinig case because he was ignorant of many basic details of the Weinig case. For example, when discussing the Weinig case with Committee staff, Weingarten attempted to characterize Weinig as a low-level white collar criminal.<sup>107</sup> However, he readily admitted that he "never, ever, ever got into the facts of the case because I felt that I didn't need to."<sup>108</sup> Regarding the kidnapping-related charge, Weingarten said, "That could hardly be called a kidnapping. If it was, it was the mildest kidnapping ever. First of all, the facts are in dispute. And, the alleged victim was fed steaks and whores."<sup>109</sup>

Every aspect of Weingarten's response is troubling. First, Weingarten was apparently trusted and respected by White House staff. It is difficult to imagine how, in lobbying the Administration, Weingarten could have accurately conveyed a factual basis for his belief in the merits of Weinig's clemency petition when he "never, ever, ever" felt the need to "[get] into the facts" of Weinig's underlying conviction. Second, contrary to Weingarten's assertion, the facts most relevant to Weinig's active involvement in the extortion-by-kidnapping scheme were not in dispute. In fact, Weinig admitted most of them in court. Those facts established that Weinig

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<sup>100</sup> *Id.*

<sup>101</sup> *Id.*

<sup>102</sup> *Id.*

<sup>103</sup> *Id.*

<sup>104</sup> *Id.*

<sup>105</sup> *Id.*

<sup>106</sup> *Id.*

<sup>107</sup> *Id.*

<sup>108</sup> *Id.*

<sup>109</sup> *Id.* Weinig's trial attorney, John R. Wing, also argued this point in a letter to U.S. Attorney Mary Jo White after Weinig's sentencing. In that letter, Wing argued that Weinig's belief that Clooney was not in danger was shared by law enforcement and that, in fact, "[i]t was later learned that Clooney was provided with steaks and prostitutes during his 'detention.'" Lev Dassin Document Production (Letter from John R. Wing, Member, Weil, Gotshal & Manges, to Mary Jo White, U.S. Attorney for the S.D.N.Y., Department of Justice (Feb. 28, 1997)) (Exhibit 5).

was aware of the scheme to kidnap Clooney and facilitated Clooney's extortion through that scheme. Finally, Weingarten's contention that Clooney's kidnapping was the "the mildest . . . ever" because his kidnappers provided him with "steaks and whores" fails to reflect the true facts of the crime. As Lev Dassin, the assistant U.S. Attorney who prosecuted the case indicated to Committee staff, "[H]aving your abductors have sex with prostitutes while you're cowering by the bed on the floor can, in no way, be construed as pleasant."<sup>110</sup> Weingarten failed to appreciate the actual dynamics of Clooney's abduction. The kidnappers, rather than Clooney, apparently partook of the steaks and prostitutes at issue.<sup>111</sup> This distinction appears to have been lost on Weingarten. Nonetheless, assuming only for the sake of argument that Weingarten's representation that Clooney was treated favorably while abducted is accurate, there is an obvious problem with Weingarten's citing it here. It is simply bizarre for a lawyer, particularly one with Weingarten's background, to suggest that the offense is mitigated by supplying a kidnapping victim with "steaks and whores."

## **B. Weinig's Wife Seeks Support for His Clemency Petition**

While Weingarten was meeting with the White House about the Weinig matter, Alice Morey called several public officials and prominent rabbis regarding her husband.<sup>112</sup> Morey sought these individuals' help in obtaining a commutation of Weinig's prison sentence. Morey's statements to these individuals can be inferred from her February 24, 2000, letter to the Pardon Attorney. In that letter, Morey characterized Weinig's role in the conspiracy as "exceedingly limited."<sup>113</sup> She also asserted that "if [Weinig] has to serve the full remainder of his sentence . . . our family will not be able to survive."<sup>114</sup> Morey further observed that "[w]ith the exception of [Weinig], all of the twenty or so co-defendants in this case received relatively light sentences and most have been out of jail for some time."<sup>115</sup> She continued, "[I]t is cruelly inequitable that Hirsch and the other major players received sentences so far lighter than that which [Weinig] received, despite [Weinig's] less significant role."<sup>116</sup>

Morey's letter to the Pardon Attorney contained many of the same arguments made in Weinig's clemency petition. However, Morey's letter also contained arguments not asserted by others. For example, Morey attempted to distance Weinig from the conspiracy by noting that

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<sup>110</sup> Telephone Interview with Lev L. Dassin, former Assistant U.S. Attorney for the S.D.N.Y., Department of Justice (Nov. 26, 2001).

<sup>111</sup> There are additional elements of the crime of which Weingarten was apparently unaware when he spoke with Committee staff. First, as Clooney was being abducted, he was plainly fearful for his life. He cried. *See* Appellate Brief, *U.S. v. Messina*, Docket No. 96-1789 (2d Cir. 1997) at 9 (citing to record). When Spence told co-conspirator Richard Messina on the telephone that Clooney cried while being abducted, Messina responded that he wished he could have been there to have seen Clooney cry. *Id.* Also, at various times during Clooney's ordeal, a co-conspirator brandished a butterfly knife. *Id.* Additionally, Clooney noticed that two other co-conspirators had a gun. *Id.* Finally, Clooney's kidnappers told him several times that he would be harmed if he tried to escape. *Id.* Had Weingarten bothered to "get into the facts," one hopes that he would have refrained from characterizing Clooney's abduction as "the mildest ever."

<sup>112</sup> Interview with Reid Weingarten, Partner, Steptoe & Johnson (Mar. 23, 2001).

<sup>113</sup> NARA Document Production (Letter from Alice Morey to Roger Adams, Pardon Attorney, Department of Justice (Feb. 24, 2000)) (Exhibit 19).

<sup>114</sup> *Id.*

<sup>115</sup> *Id.*

<sup>116</sup> *Id.*

Tohmes Peter was Hirsch's client, not Weinig's.<sup>117</sup> However, she conceded that Weinig acted on behalf of Peter "in a few instances when Hirsch was not available [and] accepted the cash payments that [Peter] made to the firm[.]"<sup>118</sup> Nonetheless, Morey maintained that "[i]nterestingly enough, prior to Hirsch's arrest and subsequent cooperation, the government had little or no evidence that [Weinig] was connected in any way other than as Hirsch's law partner."<sup>119</sup> Morey also argued that the Government had essentially entrapped Weinig, claiming that "once Hirsch began cooperating with the federal government, he began involving Harvey in his dealings with Peter Tohmes."<sup>120</sup> Morey further argued that the original indictment "barely mentions" Weinig, "perhaps because he had little to do with the illegal activities."<sup>121</sup>

Morey's position as to Weinig's activities is totally misleading. Weinig's extensive involvement in the money laundering conspiracy was supported by statements of co-conspirators and corroborated by Weinig's own admissions captured by a wiretap. Contrary to Morey's representation that Weinig's involvement was barely mentioned in the indictment, counts one, five, eleven through seventeen, nineteen, twenty-six through twenty-nine, and thirty through thirty-eight of the April 20, 1995, indictment clearly indicate Weinig's deep involvement in the money laundering conspiracy well beyond his mere partnership in the law firm. Indeed, Morey's characterization of Weinig's business transactions as having been conducted "in a few instances" is charitable and, to the extent that it ignores the \$19 million Weinig admitted to having laundered for members of the Colombian cartel and Weinig's role in the extortion-by-kidnapping scheme, irrelevant.

Regarding Weinig's guilty plea and sentencing, Morey asserted that Weinig pleaded "[f]or a host of reasons, mostly emotional and financial."<sup>122</sup> Morey also suggested that "[a]lthough [Weinig's] lawyer had been hopeful that the court would depart downward in sentencing, Judge Duffy sentenced [Weinig] to the top of the guidelines without articulating his reasons."<sup>123</sup> Morey's assertion of why Weinig pleaded guilty seems to confirm that Weinig never fully accepted responsibility for his actions – one of the requirements for receiving a commutation. Indeed, there was never a legitimate expectation of downward departure at sentencing. Weinig provided no meaningful assistance to authorities until immediately before trial, and, as described below, the information he ultimately provided was useless.<sup>124</sup> Accordingly, Weinig's plea agreement did not contemplate a downward adjustment for substantial assistance to authorities.<sup>125</sup>

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<sup>117</sup> *Id.*

<sup>118</sup> *Id.*

<sup>119</sup> *Id.*

<sup>120</sup> *Id.*

<sup>121</sup> *Id.*

<sup>122</sup> *Id.*

<sup>123</sup> *Id.*

<sup>124</sup> Telephone Interview with Lev L. Dassin, former Assistant U.S. Attorney for the S.D.N.Y., Department of Justice (Nov. 26, 2001).

<sup>125</sup> *Id.*

### C. Weinig's Wife Obtains Support From Individuals With Ties to the Administration

Alice Morey obtained the assistance of a number of individuals to press her husband's clemency case with the White House. A key individual who helped Morey was her cousin, David Dreyer, who served as a deputy communications director with the Clinton White House and senior advisor to Clinton Administration Treasury Secretary Robert Rubin. Dreyer used his White House contacts to lobby White House Chief of Staff John Podesta.<sup>126</sup> When asked about Dreyer's role in lobbying for the commutation, Weingarten confirmed that Dreyer "bugged" Podesta about the Weinig matter but does not know how many times Dreyer contacted the White House.<sup>127</sup> Weingarten noted that, because Dreyer was a "noodge," it might have been as many as 20 times.<sup>128</sup>

Dreyer has publicly noted his fondness for his cousin Alice and that he occasionally saw Weinig at various family functions.<sup>129</sup> He also observed that his friendship with Podesta, with whom he occasionally jogged in Rock Creek Park, remained strong even after he left the White House.<sup>130</sup> According to Dreyer, sometime in July 2000 during a visit to Podesta's office, he gave Podesta the cover memorandum from Weinig's clemency petition and "asked him to take a look at it and explained to him the relationship, and why this mattered[.]"<sup>131</sup> Dreyer confirmed that Podesta made no promises but was "certainly willing to look into it as an act of friendship[.]"<sup>132</sup> Dreyer asked Podesta about the matter again during the Fall of 2000 as they were jogging.<sup>133</sup> Podesta responded by telling Dreyer not to expect any action for several months.<sup>134</sup> According to Weingarten, Podesta felt that the Weinig clemency matter was a "good story" and that a decision could be made "on the merits."<sup>135</sup>

Some insight as to what Dreyer specifically told Podesta, and possibly others in the Administration, about the Weinig matter can be gleaned from a letter that Dreyer submitted to the Pardon Attorney's Office in support of Weinig's petition.<sup>136</sup> Dreyer noted in the letter that "[n]o conceivable societal interest is being served by forcing Harvey [Weinig] to remain in prison for the entire length of his maximum sentence."<sup>137</sup> Dreyer cited as bases for clemency: (1) the "disproportion" between Weinig's sentence and those of co-defendants "all more deeply involved [in the money laundering conspiracy and misprision] than he"; (2) the fact that "Harvey's wife and sons are bearing the brunt of his punishment with enormous force"; and (3)

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<sup>126</sup> Interview with Reid Weingarten, Partner, Steptoe & Johnson (Mar. 23, 2001).

<sup>127</sup> *Id.*

<sup>128</sup> *Id.*

<sup>129</sup> Benjamin Weiser, *A Felon's Well-Connected Path to Clemency*, N.Y. TIMES, Apr. 14, 2001, at A1.

<sup>130</sup> *Id.*

<sup>131</sup> *Id.*

<sup>132</sup> *Id.*

<sup>133</sup> *Id.*

<sup>134</sup> *Id.*

<sup>135</sup> Interview with Reid Weingarten, Partner, Steptoe & Johnson (Mar. 23, 2001).

<sup>136</sup> Dreyer's letter refers to "papers filed with your office [seeking] a clemency ... for Harvey Weinig," yet the petition was actually filed with the Justice Department (and the White House Counsel's Office) months later in April 2000.

<sup>137</sup> NARA Document Production (Letter from David Dreyer, Principal, TSD, Inc., to Roger Adams, Pardon Attorney, Department of Justice (Feb. 28, 2000)) (Exhibit 20).

the fact that Weinig was “a good and decent father” and “a contributing member of the community.”<sup>138</sup> Apparently content with only a superficial appreciation of the facts, Dreyer noted that the apparent disproportion between Weinig’s sentence and those of his co-defendants “[o]n its face . . . is not fair.”<sup>139</sup> As described above, these arguments are based on an incomplete understanding of the underlying case. Perhaps more importantly, characterizing Weinig as a “contributing member of society” does not help those unfamiliar with the facts of the case understand that his most significant “contribution” was to assist the Cali cartel in flooding the United States with cocaine.

In light of the specious arguments Dreyer set forth in his letter to the Pardon Attorney and also likely communicated to senior Administration officials, Chairman Burton asked Dreyer to participate in an interview with Committee staff and subpoenaed documents from Dreyer.<sup>140</sup> Dreyer declined the Committee’s invitation and asserted his Fifth Amendment rights against self-incrimination rather than produce records. Dreyer’s role in lobbying senior Clinton Administration officials for the Weinig commutation was obviously critical. Therefore, it is disappointing that Dreyer would not cooperate with the Committee’s investigation. Moreover, it is troubling that Dreyer believed that something about his involvement in the Weinig matter might be incriminating. Nevertheless, the Committee must take his representation at face value and conclude that Dreyer at least believes that he might have incurred criminal liability during the course of his activities.

Weinig’s wife, Alice Morey, also directly lobbied Harold Ickes, the President’s former Deputy Chief of Staff, whose children attended her sons’ school.<sup>141</sup> Ickes and Podesta have publicly stated that, like Dreyer, they were persuaded to support Weinig’s petition by the merits of the argument that Weinig’s sentence was disproportionate to other sentences imposed in the case.<sup>142</sup> Ickes, in particular, said, “I think what really drove it home to me was the disparity in the sentences.”<sup>143</sup> They have also stated that they believed that Weinig’s sons were suffering considerably from their father’s incarceration.<sup>144</sup> That appears to be the position that Ickes conveyed to President Clinton when the President approached him about the Weinig petition.<sup>145</sup> Ickes recalled, “[The President] asked me about it a couple of times. I don’t think he was aware of all the nuances, so I told him my view of it. It was the sentencing issue. I said, ‘Look, this guy was sentenced. He pled guilty. And nobody is claiming that he’s a saint.’”<sup>146</sup> However, it is not entirely clear why the sentencing disparity—not whether Weinig’s crimes merited the sentence Judge Duffy imposed—was the primary focus. It appears in hindsight that the disparity argument was manufactured to compensate for the fact that there were actually no intellectually defensible grounds for the argument that Weinig’s sentence should be commuted.

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<sup>138</sup> *Id.*

<sup>139</sup> *Id.*

<sup>140</sup> Letter from the Honorable Dan Burton, Chairman, Comm. on Govt. Reform, to David Dreyer, Principal, TSD, Inc. (Mar. 16, 2001) (within Appendix I) (invitation letter); Subpoena from Comm. on Govt. Reform to David Dreyer, Principal, TSD, Inc. (Apr. 4, 2001) (within Appendix II).

<sup>141</sup> Interview with Reid Weingarten, Partner, Steptoe & Johnson (Mar. 23, 2001).

<sup>142</sup> Benjamin Weiser, *A Felon’s Well-Connected Path to Clemency*, N.Y. TIMES, Apr. 14, 2001, at A1.

<sup>143</sup> *Id.*

<sup>144</sup> *Id.*

<sup>145</sup> *Id.*

<sup>146</sup> *Id.*

Reid Weingarten also enlisted Alma Brown, the widow of former Commerce Secretary Ron Brown, in the clemency campaign. Weingarten had represented Ron Brown in various investigations prior to his death and remained friendly with Alma Brown. Knowing that Alma Brown remained close to the White House, Weingarten asked her to write a letter “putting in a good word” for Weinig.<sup>147</sup> Brown initially resisted but eventually did so.<sup>148</sup> Weingarten believes that Brown also might have spoken to President Clinton about the Weinig matter.<sup>149</sup>

### **III. THE WHITE HOUSE’S REVIEW OF WEINIG’S COMMUTATION REQUEST**

#### **A. The Justice Department’s Input in the Weinig Clemency Matter**

The Justice Department repeatedly, clearly, and adamantly recommended against any reduction of Weinig’s sentence, not only at and after sentencing but also during the clemency proceedings. Some time after sentencing, Weinig’s defense counsel sent a 34-page letter to U.S. Attorney Mary Jo White seeking a reduction of Weinig’s sentence. In response, White rejected the request out of hand. Also, when Weinig sought a commutation of his sentence from the White House, the Justice Department, through Pardon Attorney Roger Adams, voiced its opposition.

##### **1. The U.S. Attorney Strongly Objected to Commuting Weinig’s Sentence**

U.S. Attorney Mary Jo White expressed her opinion on the Weinig commutation in her official comments to the Pardon Attorney. White’s position was then communicated by the Pardon Attorney to President Clinton. White disputed Weinig’s description of his role in the money laundering conspiracy.<sup>150</sup> Citing Weinig’s admissions at the sentencing hearing and in the recorded conversations with Hirsch, White argued that “the evidence amply demonstrates both Weinig’s knowledge of and enthusiasm to participate in this scheme.”<sup>151</sup> White also argued that Weinig “misstates his role in the extortion scheme,” and she challenged his argument that “he should be exonerated on [the misprision] count because his ethical duties as a lawyer prevented him from disclosing confidential information.”<sup>152</sup>

White explained that “the extortion charge . . . stemmed not from Weinig’s failure to interfere with the kidnapping, but rather from his affirmative efforts to conceal and further his client’s extortion of Clooney.”<sup>153</sup> White also noted that “the tapes of Weinig’s conversations with Hirsch regarding the kidnapping provide perhaps the greatest example of Weinig’s shocking lack of morality or care for the rule of law.”<sup>154</sup> White described Weinig’s “suggestion that New

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<sup>147</sup> Interview with Reid Weingarten, Partner, Steptoe & Johnson (Mar. 23, 2001).

<sup>148</sup> *Id.*

<sup>149</sup> *Id.*

<sup>150</sup> NARA Document Production (Report to the President on Proposed Denial of Executive Clemency for Harvey Weinig) at 11 (Exhibit 3).

<sup>151</sup> *Id.*

<sup>152</sup> *Id.*

<sup>153</sup> *Id.* at 11.

<sup>154</sup> *Id.* at 12.

York [S]tate's ethics rules either compelled, or at least justified, his conduct" as "perverse."<sup>155</sup> In particular, she noted that, although Spence was Weinig's client, he plainly did not inform Weinig of the kidnapping because he was seeking legal advice.<sup>156</sup> White maintained that, to the contrary, Spence sought Weinig's assistance in obtaining ransom from Clooney. She observed that "[n]othing in the ethics rules governing attorney conduct in New York State (or any other state for that matter) sanctions one's *affirmative* participation in a crime, let alone the collection of ransom from a kidnap victim, which is exactly what Weinig directed his law firm's associates to do."<sup>157</sup> White also noted that the Appellate Division of the State of New York, which accepted Weinig's resignation from the bar, took grave exception to his interpretation of the state's ethics rules.<sup>158</sup>

White also challenged Weinig's claim of entitlement to commutation because he received a longer sentence than did his co-conspirators.<sup>159</sup> White noted that several co-conspirators, including Gary Salerno and Tohmes Peter, received significant, comparable jail sentences for their crimes.<sup>160</sup> White observed that Weinig was not similar to other co-conspirators in that he was a successful attorney and, therefore, had no reason to engage in illegal activity other than "sheer greed."<sup>161</sup> White further noted that, contrary to co-conspirators Hirsch and Spence, Weinig repeatedly declined to cooperate with the Government and admit his guilt until immediately before trial.<sup>162</sup> White explained that any disparity existing between Weinig's sentence and those of his money laundering co-conspirators is explained by Weinig's active participation in the kidnapping scheme.<sup>163</sup> Finally, White argued that Weinig's family situation did not justify commutation of his sentence.<sup>164</sup> White apparently notified Judge Duffy, the judge who sentenced Weinig, of Weinig's ongoing effort to obtain presidential clemency. Judge Duffy did not comment on the petition "other than to point out that Mr. Weinig was sentenced within the Guidelines' range and that the Commutation Application contains no facts not known to the prosecution and the sentencing court at the time of conviction."<sup>165</sup>

## 2. The Pardon Attorney Objected to Commuting Weinig's Sentence

Roger Adams, the Pardon Attorney, also opposed the Weinig commutation. In his report to the President, Adams pointed out that the length of Weinig's sentence was directly attributable to the following aggravating factors: the extremely large amount of money Weinig helped to launder, Weinig's actual knowledge that the money he laundered was narcotics trafficking proceeds, and Weinig's use of his special skills as an attorney to ensure that the offense would succeed.<sup>166</sup> The report further stated that, but for those aggravating factors, Weinig's sentence

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<sup>155</sup> *Id.*

<sup>156</sup> *Id.*

<sup>157</sup> *Id.*

<sup>158</sup> *Id.*

<sup>159</sup> *Id.* at 12.

<sup>160</sup> *Id.*

<sup>161</sup> *Id.*

<sup>162</sup> *Id.*

<sup>163</sup> *Id.*

<sup>164</sup> *Id.* at 13.

<sup>165</sup> *Id.*

<sup>166</sup> *Id.*

would have been much lower.<sup>167</sup> The report also noted that Weinig's argument that his sentence was too severe under the sentencing guidelines was meritless because his offense (of assisting in the laundering of millions of dollars that he knew were the proceeds of drug sales) falls comfortably within the category of drug-related financial crimes that Congress sought to punish severely through the money laundering statute and its sentencing guidelines.<sup>168</sup>

The report refuted Weinig's claim that he learned of Spence's kidnapping of Clooney only after Clooney was released. Weinig's claim is flatly disproved by his contemporaneously recorded telephone conversations with Robert Hirsch. Given that Weinig's claim indicates his unwillingness to accept full responsibility for his role in the extortion scheme, according to the report, Judge Duffy was fully entitled under the sentencing guidelines to consider this fact when determining Weinig's proper sentence.<sup>169</sup>

Regarding Weinig's argument that his sentence was unfair in comparison to his co-conspirators, the report notes that, inasmuch as Weinig plainly sought to downplay his involvement in the extortion scheme, he also sought to significantly minimize his role in the money laundering conspiracy, calling himself "a belated and minor participant."<sup>170</sup> The report correctly notes that this characterization is contrary to the evidence. Although the report concedes that Weinig was less frequently involved in the day-to-day operations of the money laundering scheme, it notes that Weinig participated in the planning and oversight of the operation, wired money when needed, assisted in recovering seized funds, and participated fully in the profits of the enterprise.<sup>171</sup> The report also noted that, unlike his co-conspirators, Weinig rejected repeated requests from the government for assistance and did not enter into a plea agreement until the eve of trial – nearly 10 months after his arrest and long after his co-conspirators pled guilty.<sup>172</sup> Accordingly, the report observes that:

[Weinig] thus has no one but himself to blame for the fact that, unlike his co-defendants, he was not the beneficiary of a government motion for a downward departure at sentencing, since his own choices precluded him from providing the kind of assistance that would have warranted such a request.<sup>173</sup>

Critically, the report notes that, under those circumstances, commuting Weinig's sentence as he proposed would "significantly undermine" the government's "legitimate and important policy interests in encouraging early and complete cooperation by criminal defendants."<sup>174</sup>

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<sup>167</sup> *Id.*

<sup>168</sup> *Id.*

<sup>169</sup> *Id.*

<sup>170</sup> *Id.* at 14.

<sup>171</sup> *Id.*

<sup>172</sup> *Id.* See NARA Document Production (Letter from Mark P. Goodman, Assistant U.S. Attorney for the S.D.N.Y., for Mary Jo White, U.S. Attorney for the S.D.N.Y., Department of Justice, to John R. Wing, Member, Weil, Gotshal & Manges (Sept. 20, 1995)) (Exhibit 2) (plea agreement).

<sup>173</sup> See NARA Document Production (Report to the President on Proposed Denial of Executive Clemency for Harvey Weinig) at 14 (Exhibit 3).

<sup>174</sup> *Id.* at 14-15.



Finally, the report maintains that Weinig's remaining arguments for clemency, those relating to a history of and potential for continued community service as well as those relating to family hardship, simply fail to distinguish Weinig from other convicted felons. The report helpfully notes that many felons have enjoyed fewer advantages than has Weinig, have served longer portions of their lengthy sentences, and have had their clemency requests denied by President Clinton. Given the foregoing and the vehement opposition of the prosecuting U.S. Attorney, the report recommended denial of Weinig's petition.

The Committee finds the Justice Department's positions, as articulated by both U.S. Attorney Mary Jo White and Main Justice, powerfully persuasive. Their positions reflect a reasoned, thoughtful deliberation of the merits of Weinig's clemency application against criteria traditionally considered when vetting clemency petitions. They also reflect a thorough understanding of Weinig's underlying conviction and the extant record. To accept Weinig's argument requires a willingness to overlook the facts of the underlying conviction and the record. Such willful blindness gives rise to the inference that the ultimate decision to commute Weinig's sentence was motivated by a factor other than the merits of Weinig's petition.

## **B. The White House's Deliberations**

By late 2000, Weinig's clemency matter was brought before President Clinton for consideration. Despite the Justice Department's opposition to the commutation and the lack of any strong arguments in favor of the commutation, key White House staff supported the commutation. The Weinig commutation, like many of President Clinton's other final clemency grants, is remarkable for the lack of analysis that the case received at the White House. The White House seems to have ignored the strong recommendations of the Pardon Attorney and the Justice Department prosecutors and granted the commutation after only cursory consideration.

Support from John Podesta and Beth Nolan appears to have been critical to the decision to grant the Weinig commutation. Podesta had been lobbied by his former staffer, David Dreyer, and Nolan had been lobbied by Reid Weingarten. Eric Angel, an Associate White House Counsel who was working on clemency matters, recalls that Podesta "asserted himself" in favor of Weinig at a meeting with the President regarding the Weinig matter.<sup>175</sup> White House Counsel Beth Nolan also supported the Weinig commutation.<sup>176</sup> The lower-level staff in the Counsel's Office, Meredith Cabe and Angel, were not as supportive. Angel claims that he was strongly opposed to the commutation because of the seriousness of Weinig's crimes.<sup>177</sup> Cabe put her opposition in more gentle terms, stating simply that she was "not a big fan" of the Weinig case.<sup>178</sup> According to Cabe, Podesta and Nolan supported the Weinig commutation for two main reasons. First, they believed that Weinig's sentence was disproportionately long, apparently accepting the argument that Weinig was treated unfairly because his co-conspirators received

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<sup>175</sup> Interview with Eric Angel, former Associate Counsel to the President, the White House (Mar. 28, 2001).

<sup>176</sup> Interview with Meredith Cabe, former Associate Counsel to the President, the White House (Mar. 16, 2001).

<sup>177</sup> Interview with Eric Angel, former Associate Counsel to the President, the White House (Mar. 28, 2001).

<sup>178</sup> Interview with Meredith Cabe, former Associate Counsel to the President, the White House (Mar. 16, 2001).

lighter sentences than he did.<sup>179</sup> Second, one of Weinig's children was suffering from severe emotional distress as a result of his father's incarceration.<sup>180</sup>

By late December 2000, the White House Counsel's Office was prepared to recommend that Weinig's sentence be commuted. In a December 17, 2000, draft memorandum to the President, Beth Nolan, Bruce Lindsey, and Meredith Cabe recommended clemency but noted opposition by the office of the prosecuting U.S. Attorney.<sup>181</sup> A December 20, 2000, draft memorandum noted opposition by Deputy Attorney General Eric Holder and recommended that Weinig's sentence be commuted to 108 months "[s]ince [Weinig] agreed in guilty plea range should be 108-135 months[.]"<sup>182</sup> As the "rationale" for the recommendation, Nolan, Lindsey, and Cabe observed that "[m]ore culpable co-defendants, including the law partner who directed the kidnapping, received shorter sentences and have been released."<sup>183</sup> No mention is made of the substantial assistance provided by the "more culpable defendants" to investigating authorities or that a similarly situated defendant (who actively participated in the extortion by kidnapping scheme) received a sentence comparable to Weinig's. Presumably, both of these facts, as well as a correction to the misstatement that Weinig's "law partner . . . directed the kidnapping," were made in the final draft of the memorandum or orally when advising the President. It is also unclear when or why the decision was made to commute Weinig's sentence from 108 months to time served. But, drafts of "Pending Clemency Matters" noted that "Rep. By Reid Weingarten; through JDP; Harold Ickes."<sup>184</sup>

The only indication of the President's reasoning in the Weinig matter comes from a copy of the summary of Weinig's argument for a commutation. On a note attached to that document, President Clinton wrote, "M. Cabe – This looks meritorious[.] Advise[.] – BC."<sup>185</sup> At the top of the memorandum itself, President Clinton wrote, "Reduce to time served."<sup>186</sup> On January 20, 2001, President Clinton commuted Harvey Weinig's 11-year prison term to time served, which reduced Weinig's sentence by 66 months.

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<sup>179</sup> *Id.*

<sup>180</sup> *Id.*

<sup>181</sup> NARA Document Production (Draft Memorandum to the President by Beth Nolan, Bruce Lindsey, and Meredith Cabe (Dec. 17, 2000)) (Exhibit 21).

<sup>182</sup> NARA Document Production (Draft Memorandum to the President by Beth Nolan, Bruce Lindsey, and Meredith Cabe (Dec. 20, 2000)) (Exhibit 22).

<sup>183</sup> Interview with Meredith Cabe, former Associate Counsel to the President, the White House (Mar. 16, 2001).

<sup>184</sup> NARA Document Production (Draft Memorandum from Beth Nolan, Bruce Lindsey, and Meredith Cabe to President William J. Clinton entitled "Pending Clemency Matters") (Exhibit 23) (entry for Weinig only).

<sup>185</sup> NARA Document Production (Summary of Harvey Weinig's Petition for Commutation) (Exhibit 24) (note attached).

<sup>186</sup> *Id.*

### C. The White House Had No Justification for the Weinig Commutation

Weinig articulated three main reasons why he was entitled to presidential clemency: (1) that his sentence was disproportionate and excessive; (2) that his contributions to society justified his early release from prison; and (3) that one of his sons was suffering severe emotional difficulties as a result of his imprisonment. The first reason simply was not true. The other two did not justify any reduction in his sentence, much less his release from prison.

Weinig's main argument in favor of the commutation was that his sentence was disproportionate and excessive. In support of his claim, Weinig pointed to his main two co-defendants, Richard Spence and Robert Hirsch, both of whom received lighter sentences than he did and who arguably were more involved in money laundering activities. However, Weinig's sentence was stiffer than those received by Spence and Hirsch because they, unlike Weinig, cooperated with law enforcement.<sup>187</sup> Judge Duffy adjusted their sentences downward because they provided substantial assistance to investigative authorities.<sup>188</sup> Co-conspirators truly "equally culpable," including Tohmes Peter and Gary Salerno, received sentences comparable to Weinig's 135-month imprisonment term.<sup>189</sup>

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<sup>187</sup> Weinig has argued on occasion that he attempted to cooperate with the government but was rebuffed. A close examination of Weinig's claims shows them to be hollow. Between the time when Weinig entered his guilty plea and his sentencing hearing, Weinig apparently attempted to cooperate with the Government. *See* Interview with Reid Weingarten, Partner, Steptoe & Johnson (Mar. 23, 2001); NARA Document Production (Report to the President on Proposed Denial of Executive Clemency for Harvey Weinig) at 6-7 (Exhibit 3). Specifically, he submitted himself for debriefing regarding the money laundering operation in November 1995. At that time, he told authorities that Robert Hirsch had violated his own cooperation agreement with the government by resuming his money laundering activities. *Id.* But this fact was already well known to the federal government. Months earlier, in May 1995, and well before his guilty plea, the government already knew about Hirsch's activities and moved for revocation of Hirsch's bail. *Id.* at 7; *see* Telephone Interview with Lev L. Dassin, former Assistant U.S. Attorney for the S.D.N.Y., Department of Justice (Nov. 26, 2001). Ultimately, the federal government did reach an agreement with Hirsch whereby Hirsch agreed to plead guilty to money laundering, bank fraud, and making false statements to federal law enforcement authorities and to cooperate with law enforcement. *See* NARA Document Production (Report to the President on Proposed Denial of Executive Clemency for Harvey Weinig) at 7 (Exhibit 3). Under this agreement, Hirsch received a sentence of three years imprisonment under the federal sentencing guidelines. The prosecutors made this deal with Hirsch primarily because they needed his cooperation to prosecute Weinig. *See* Telephone Interview with Lev L. Dassin, former Assistant U.S. Attorney for the S.D.N.Y., Department of Justice (Nov. 26, 2001). As the U.S. Attorney informed the Pardon Attorney, "The predominant reason the Government resigned Hirsch as a cooperator was to assist in prosecuting [Weinig's] trial. If [Weinig] had admitted his guilt earlier, Hirsch would not have been resigned as a cooperating witness." NARA Document Production (Report to the President on Proposed Denial of Executive Clemency for Harvey Weinig) at 7 (Exhibit 3).

<sup>188</sup> Telephone Interview with Lev L. Dassin, former Assistant U.S. Attorney for the S.D.N.Y., Department of Justice (Nov. 26, 2001).

<sup>189</sup> Peter received 97 months in prison, and Salerno received 108 months in prison. Leon and Rachel Weinmann were indicted for, among other things, money laundering and, under separate indictment, causing a \$20,000 fully endorsed third-party check to be sent from New York City to Switzerland without filing a particular customs report. On May 19, 1995, they pleaded guilty to only the customs violation. U.S. Probation Office (S.D.N.Y.) Document Production (Pre-sentence Investigation Report, *U.S. v. Weinig* (S.D.N.Y. Mar. 19, 1996)) at 12 (Exhibit 1). But, prior to their sentencing, it was stipulated that (1) the Weinmanns were charged with money laundering in Switzerland; (2) the case against the Weinmanns represented the second largest money laundering prosecution in Swiss history; and (3) the Weinmanns should be extradited as soon as possible to Switzerland for prosecution there. *Id.* at 13. Accordingly, the Weinmanns waived the preparation of a presentence report; the Government declined to take a position regarding the Weinmann's sentencing; and, for the crime to which they pled guilty, the Weinmanns

Indeed, in many criminal cases involving multiple co-defendants, the Government obtains cooperation from some defendants to help develop its case against others. Generally, and understandably, there arrives a point in the investigation in which the Government becomes unwilling to make available any more deals with other co-defendants. In such cases, those co-defendants choose to take their chances with the judge and the jury rather than cooperate with the Government. Until the eve of trial, this was Weinig's decision.<sup>190</sup> Accordingly, Weinig's citing the resulting "disproportion" between reduced sentences given to co-defendants who substantially assisted the Government and the sentences of those who decide not to is flawed because it renders his case indistinguishable from all similar cases where cooperation agreements were used to obtain evidence. In other words, Weinig cannot argue that the methods by which law enforcement gathered evidence to convict him is inherently unfair without requiring that all those cases where convictions were obtained by those same means also be reversed. Such a position is obviously untenable.

The second main argument used by Weinig as a justification for his commutation is that his humanitarian actions justified his early release from prison. The basic thrust of this argument was that, apart from his activities laundering money for the Cali cartel and participating in a kidnapping scheme, Weinig was actually a very nice person. There are several obvious flaws with this argument. First, it should not have been relevant to the President's analysis. Second, there is little evidence that Weinig was a humanitarian in any significant sense. Rather, the letters of support for Weinig in his clemency petition basically show that Weinig, like most people, had friends who liked him. While he may have been nice to his children and friends, it is difficult to ignore that he was laundering millions of dollars in drug money for the Cali cartel. The fact that Harvey Weinig consciously decided to assist and profit from the Cali cartel's efforts to distribute massive amounts of cocaine in the United States should have been both the

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were sentenced by Judge Kevin T. Duffy to 1 year unsupervised probation, a \$1,000 fine each, and a \$50 special assessment. *Id.* The Weinmanns were then escorted to a flight to Switzerland for prosecution. *Id.* See *Swiss Couple to Be Extradited from United States*, *Official Says*, ASSOCIATED PRESS WORLDSTREAM, May 16, 1995. However, Marc Ziegler, who was then the District Attorney for the Canton of Zurich, noted substantial difficulty with his prosecution of the Weinmanns. The prosecution was intended as a test case of Switzerland's money laundering law, which was introduced in 1990. Apparently, the case against the Weinmanns in Switzerland arose out of the same facts that gave rise to the Weinmann's indictment for money laundering in the U.S. Nonetheless, as described below, many of Weinmann's co-conspirators entered into plea agreements, which precluded evidence that could have been used against the Weinmanns in their prosecution in Switzerland. Ziegler attributes his difficulties in prosecuting the Weinmanns to that factor, ambiguities in the Swiss money laundering statute, and the differences between Swiss and American evidentiary law. The current status of the Swiss case against the Weinmanns is unknown.

Richard Messina, one of Weinig's co-conspirators in the scheme to extort James Clooney by kidnapping, was sentenced to 151 months incarceration and three years supervised release—a sentence comparable to Weinig's sentence. Judge Duffy sentenced both Weinig and Messina to the upper end of a recommended sentencing range of 121 to 151 months imprisonment. Judge Duffy's rationale for Messina's sentence was very similar to his rationale for sentencing Weinig, an attorney, to 135 months. He found, among other things, that Messina knowingly played a role in the extortion of Clooney and engaged in serious criminal conduct after having been disbarred. See Telephone Interview with Lev Dassin, former Assistant U.S. Attorney for the S.D.N.Y., Department of Justice (Nov. 26, 2001); Appellate Brief, *U.S. v. Messina*, Docket No. 96-1789 (2d Cir. 1997) at 20 (citing to record for judge's reasons).

<sup>190</sup> Telephone Interview with Lev L. Dassin, former Assistant U.S. Attorney for the S.D.N.Y., Department of Justice (Nov. 26, 2001).

starting and finishing point in determining his suitability for Presidential clemency. Doubtless, many families around the United States could provide tragic stories supporting the theory that a money launderer for one of the most powerful Colombian drug cartels is not the kind of person that should be described as humanitarian.

The final argument used by Weinig to support his clemency effort was that one of his children was suffering emotional difficulties as a result of his imprisonment. It appears that this argument, more than any other, had a great impact upon the President's decision to grant the commutation. John Podesta obliquely referred to this in one of his public comments about the Weinig case: "I think that people were aware of what he had done, but that ultimately, I think that based on the length of time he had served and based on a humanitarian plea, while a difficult case, it seemed like the right decision."<sup>191</sup>

However, the "humanitarian plea" made by Weinig did not justify the commutation of his sentence. Thousands of criminals have families adversely impacted by the stigma of criminal conviction or the fact of incarceration. Yet, this fact should serve as a deterrent to crime, not as a reason to let criminals out of prison long before their sentences are completed. One of the letters in support of Harvey Weinig noted, "Harvey's love for his children has always been a dominant factor in his life, shaping his ideas of how he wants to spend his time, his money and his life."<sup>192</sup> If this were true, Harvey Weinig would have decided not to join a conspiracy to launder millions of dollars of drug money for, or tried to steal millions of dollars from, the Cali cartel. Weinig knew that his money laundering activity was illegal and that it, as well as his attempted theft of the cartel's drug money, exposed his family to considerable danger. He also knew that, if he was caught by authorities laundering drug money or the cartel stealing its money, he would go to prison or be harmed by the Colombian drug traffickers themselves. However, because of what U.S. Attorney Mary Jo White described as "sheer greed," Weinig participated in substantial criminal conduct that ended up harming his family immeasurably. Given that it was Harvey Weinig who harmed his family, it is unclear why that same harm should then be used to justify freeing Weinig from prison. Weinig's plea is reminiscent of the man who kills his parents and then asks for leniency because he is an orphan. Weinig's "humanitarian plea" also ignores entirely his role in bringing into the United States large volumes of drugs that harmed innumerable families.

Moreover, as Weinig's situation was no different from that of thousands of other inmates, it is hard to see why President Clinton chose to grant clemency to Weinig, rather than one of the other thousands of inmates whose families were suffering because of their incarceration. In short, the only answer is that President Clinton chose Weinig because he was the person who had the access, through his wife's cousin, David Dreyer, and his lawyer, Reid Weingarten, to make his case to the President and the White House staff.

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<sup>191</sup> Benjamin Weiser, *A Felon's Well-Connected Path to Clemency*, N.Y. TIMES, Apr. 14, 2001, at A1.

<sup>192</sup> NARA Document Production (Letter from Cynthia A. Hayes to the Honorable Kevin Thomas Duffy, U.S. District Court Judge (Dec. 18, 1995)) (Exhibit 25).

#### D. Aftermath of the Weinig Commutation

President Clinton's grant of clemency to Harvey Weinig has trivialized the seriousness of Weinig's criminal misconduct. Having interviewed law enforcement personnel, it is also clear that the clemency decision has eroded morale among law enforcement personnel who put their lives on the line and work tirelessly to enforce the drug laws on a federal, state, and local level. As a policy matter, the grant of clemency has also undermined the government's legitimate interest in encouraging prompt guilty pleas and truthful cooperation from criminal defendants.

Domestically, President Clinton's action conveyed an appearance of granting special consideration to wealthy, politically well-connected criminals and their relatives. Pardon Attorney Roger Adams foresaw the message sent by the Weinig commutation, warning President Clinton that:

To commute [Weinig's] prison term to the five years he proposes would denigrate the seriousness of his criminal misconduct, undermine the government's legitimate interest in encouraging prompt guilty pleas and truthful cooperation from criminal defendants, and could give the appearance of granting special consideration to economically advantaged, white-collar offenders.<sup>193</sup>

It is difficult to disagree with Adams' conclusion. Clearly, many prison inmates have families that have been adversely impacted by their criminal activity. Yet, of all those people, Harvey Weinig received a commutation of sentence. Weinig's commutation did not come as a result of having committed some minor crime – he was a money launderer for the Cali cartel. Rather, Weinig received a commutation because he was wealthy and privileged, could hire a lawyer like Reid Weingarten, and had relatives and friends who knew the President.

On an international level, President Clinton's commutation decision has unfortunately sent the message to the world that the United States' commitment to eradicating narcotics trafficking is, to some extent, disingenuous. Former Colombian National Police Chief Rosso Serrano noted that President Clinton "sent the wrong message to the anti-drug struggle, because it negates the suffering of all the families of those who died to fight trafficking."<sup>194</sup> According to Serrano, "[The Weinig clemency decision is] very frustrating. [The drug traffickers] must be laughing at us. It's a terrible precedent for those of us who have openly fought this scourge."<sup>195</sup> In an op-ed entitled "The Morality of the Strongest" in *El Tiempo*, Colombia's leading daily, Gustavo De Greiff, a former Colombian attorney general, labeled President Clinton's clemency decision "monstrous."<sup>196</sup> Likewise, former Colombian president Ernesto Samper, who saw his country decertified and facing sanctions for his apparent lack of cooperation with the United States, described the clemency as "repugnant."<sup>197</sup> He rhetorically asked, "What would have

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<sup>193</sup> NARA Document Production (Report to the President on Proposed Denial of Executive Clemency for Harvey Weinig) at 15 (Exhibit 3).

<sup>194</sup> *Former Colombian drug agent blasts Clinton's pardon of trafficker*, AGENCE FRANCE PRESSE, Mar. 4, 2001.

<sup>195</sup> *Colombian General Hits Clinton Commutation*, WASH. TIMES, Mar. 6, 2001, at A13.

<sup>196</sup> Russell Crandall, *The Americas: In the War on Drugs, Colombians Die, Americans Are Pardoned*, WALL ST. J., Apr. 20, 2001, at A15.

<sup>197</sup> *Id.*

happened if, with just a few days left in my presidency, I had set free several drug traffickers arrested in Bogota, and if those same people were found to be helping people in my government?"<sup>198</sup>

Indeed, President Clinton's eleventh-hour commutation of Weinig's sentence prompted government officials and the media in Colombia to accuse the U.S. government of hypocrisy. During the mid-1990s, the Clinton administration openly condemned the Colombian government's "surrender policy" toward the Cali cartel. Pursuant to the "surrender policy," the Colombian government allowed reduced prison sentences for drug kingpins who agreed to surrender. And, currently, an important element of the U.S. anti-drug approach is the \$1.3 billion U.S. commitment to Plan Colombia – President Andres Pastrana's program to recover control of the country from guerilla factions brutally dominating the Colombian countryside in furtherance of their cocaine production enterprises. But, there can be no doubt that, to the extent that eradicating narcotics trafficking is indeed important to the United States, such a commitment should be reflected in the activities of those charged with the public trust at the highest levels of elected office.

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<sup>198</sup> *Id.*